

Docket No: 01-0007
Bench Date: 6/6/01
Deadline: 6/20/01

MEMORANDUM

TO: The Commission

FROM: Leslie Haynes/Sherwin Zaban/Claudia Sainsot,
Hearing Examiners

DATE: June 5, 2001

SUBJECT: Verizon Wireless

Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois.

The Application for Rehearing

RECOMMENDATION: Grant Application for Rehearing.

On May 1, 2001, the Commission entered its final Order in this Arbitration. On May 31, 2001, Ameritech filed an Application for Clarification and/or Rehearing (the "Application"). Ameritech contests the Commission's Order with respect to Issue 10 (originally labeled Issue #2 and later switched to Issue #10) and more specifically, Section 4.4 of the Interconnection Agreement which was a part of Issue 10. The issue is whether the following sentence, which Verizon supports, should be included at the end of Section 4.4:

Telco [Ameritech] shall provide equivalent transiting reports to Carrier [Verizon Wireless] for land to mobile traffic from other carriers as they provide transiting reports of carrier's mobile to land traffic to other carriers.

Ameritech contends that the language in the Order is unclear and could mean that the Commission adopted Verizon's language or that the parties were to resolve the dispute themselves. The specific language of the Commission Order is as follows:

In its Brief on Exceptions, Verizon contends that the Hearing Examiners failed to resolve a remaining dispute in Issue 2 (prior to hearing, this was switched to Issue 10 by Verizon):

whether Verizon's proposed language for Section 4.4 of the interconnection agreement should be included. Verizon's only briefing on this issue is in a footnote to Issue 10 in its Initial Brief. Also notable is that Verizon failed to address this Issue in its proposed order. Ameritech, on the other hand, never addresses this issue in its briefs or proposed order.

We point out that in Ameritech's Response to the Petition, it states with respect to Issue 2, 'Verizon Wireless' language is generally acceptable with minor wording changes.' (Response, p. 5). The wording changes referenced here are to Section 11.2.4 of the contract. Ameritech, therefore, finds Verizon's language for Section 4.4 'generally acceptable.' Given Ameritech's acceptance of Verizon's language in the Response and lack of briefing on the issue, no Commission action is necessary. (Docket 01-0007, May , 2001 Order, p. 21).

Ameritech takes issue with the statement that Ameritech accepts Verizon's language for Section 4.4 of the Interconnection Agreement. According to Ameritech, Section 4.4 has always been in dispute; it contends that this was clear throughout the proceeding. Ameritech attached several exhibits to its Application to support this contention. Ameritech contends that in these documents it made its position clear that the proposed language was not acceptable and Ameritech further states that Verizon offered no evidence on this Issue.

Ameritech further argues that Verizon's position is unsupportable because the reports that Verizon wants do not exist and the language does not address how Ameritech will be compensated for creating such reports.

Analysis:

Initially, we feel compelled to point out that neither Ameritech nor Verizon presented evidence on this issue. No discussion of the issue was included in the pre-filed testimony; nor was the issue mentioned at hearing. Furthermore, briefing on the issue was negligible, at best. As pointed out in the Commission Order, Verizon included a very limited discussion in a footnote of its Initial Brief. Additionally, neither party included the issue in its proposed order to the Hearing Examiners.

Based on the inaction by both parties involved, the Hearing Examiners deemed that this issue was no longer in dispute. Although Verizon, in its Brief on Exceptions, pointed out that no decision was reached on this issue, Ameritech still made no arguments relative to this issue.

Verizon's treatment of the issue was almost as inattentive as that of Ameritech (its only discussion was in a footnote). The Examiners note most importantly that neither side presented any evidence relative to this issue. As Ameritech states in its Application, Verizon offered "no evidence of anything." (paragraph 20) and most telling of all is the following language from the Application:

For all the attention section 4.4 is receiving now, it received virtually none during the course of the arbitration - except for being bounced by Verizon Wireless from Issue 2 to Issue 10. Neither party submitted testimony on the disputed sentence. Neither party briefed the disputed sentence, with the exception of a footnote in Verizon Wireless' initial brief that consisted only of unsupported assertions of purported fact (necessarily unsupported, since there was no testimony on the matter). (Application, para. 14).

Although we believe that Ameritech has most likely waived any right to have a decision in its favor, we also believe that Verizon was remiss in its presentation on this issue. As a result, it is not possible, based on this record, to make a meaningful determination on this issue. As Ameritech pointed out, this issue is not a legal one; resolution of Issue 10 requires evidence. (Application para. 20). The inaction by both parties was misleading and should not result in an outcome in favor of one party over the other. The Hearing Examiners believe that proper resolution of this issue is more important than holding either side accountable for their inaction.

In response to Ameritech's Application for Rehearing, Verizon claims that Ameritech's inaction constitutes a waiver of its right to contest the language in question, citing Supreme Court Rule 341. While we agree that the parties have been inactive regarding this issue, we feel compelled to point out that Supreme Court Rule 341 only concerns matters in Illinois Appellate Courts, not the Illinois Commerce Commission. Therefore, Verizon's arguments are not persuasive.

For these reasons, and, in order to develop a complete record, we recommend that rehearing be granted for the limited purpose of developing evidence relative to Issue 10 as it pertains to Section 4.4 of the Interconnection Agreement.

LH/SZ/CS;jt